

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

TONY TERRELL CAMPBELL,

Plaintiff,

v.

CIVIL ACTION NO. 5:02-1228

WARDEN JOYCE CONLEY, et al.,

Defendants.

ORDER

By Standing Order entered on May 20, 2002, and filed in this case on October 9, 2002, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on December 17, 2004, and proposed that this court (1) confirm and accept the Magistrate Judge's findings contained within his Proposed Findings and Recommendation, (2) grant defendants' motion to dismiss or in the alternative for summary judgment (Docket No. 32), and (3) direct the Clerk to remove this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file

objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court.

Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985). Moreover, this court need not conduct a de novo review when a petitioner "makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982).

After receiving an extension, plaintiff timely filed objections to the magistrate judge's findings and recommendations. Plaintiff's objections center around the magistrate judge's findings regarding administrative exhaustion. (See Docket No. 45.) However, in the F & R, the magistrate judge found that plaintiff had alleged enough information regarding defendants' frustration of plaintiff's attempts to exhaust to survive a motion to dismiss. (See Docket No. 38 at 16.) Plaintiff makes no effort to respond to the magistrate judge's other findings that plaintiff had failed to allege a constitutional violation and that defendants were entitled to qualified immunity regarding plaintiff's allegations. (See generally Docket No. 45.) Having reviewed the record, the court finds that the magistrate judge's reasoning and factual analysis on these point were correct. As such, plaintiff's objections are hereby OVERRULED in their entirety.

Having reviewed the Findings and Recommendation filed by Magistrate Judge VanDervort, the court (1) CONFIRMS and ACCEPTS the factual and legal analysis within the magistrate judge's Proposed Findings and Recommendation, (2) GRANTS defendants' Motion to Dismiss or in the Alternative for Summary Judgment (Docket No. 32), and (3) DIRECTS the Clerk to remove this action from the active docket of this court.

The Clerk is further directed to forward a certified copy of this Order to all counsel of record and the plaintiff, pro se.

IT IS SO ORDERED this 26th day of October, 2005.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Chief Judge